Supreme Court, U.S.
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No. 01-1254

IN THE

Supreme Court of the United States

ANGELA BERNHARDT,

Petitioner,

v.

SANTA MONICA COLLEGE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR SANTA MONICA RESPONDENTS

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LIST OF PARTIES

The Santa Monica Respondents include Santa Monica College as well as Santa Monica Community College District, Santa Monica College Board of Trustees, Santa Monica College Police Dept., R. L. Jones, Ron Marable, Eileen Miller, Piedad Robertson, Robert Sammis, Joanne Fielder, Brenda Simmons, Herb Roney, Dorothy Ehrhart Morrison, Nancy Cattell, Carol L. Curry, Illona Jo Katz, Patrick Nichelson and Annette Shamey.

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The Santa Monica Respondents respectfully request that the Court deny the Petition. Petitioner has set out nineteen separate questions she believes can properly be considered by this Court. However, none of them meet this Court's standard for an issue appropriately submitted for the Court's consideration and, therefore, the Petition should be denied.

STATEMENT OF THE CASE

The Santa Monica Respondents vigorously dispute the Statement of the Case presented by Petitioner, as well as the articulations of issues in the case, and submit the following statement of the facts and the proceedings in the District Court and Court of Appeal.

Giving Petitioner's original Complaint filed in the District Court for the Central District of California the most generous construction possible, it appeared to allege as follows. In July, 1994, while she was a student at Santa Monica College, Petitioner experienced an unwelcome encounter with an instructor which she believed was sexual in nature. (In her Complaint, she called this encounter a "restrained sexual assault.") She did not bring this incident to the attention of any other person at Santa Monica College. She finally reported the incident to the Santa Monica College Police Department in November, 1996. She was advised that the incident was probably too old to investigate adequately, but the officer she spoke to did interview her and did interview the accused instructor. He suggested she report the matter to the administration at the College, which she did not do for at least six more months.

In April, 1997, for reasons that appeared on the face of the Complaint to involve the Student Conduct Code,

Petitioner was directed to meet with a Santa Monica College administrator. Although Petitioner apparently believed that this direction violated her due process rights in some way, she never actually alleged that the direction in itself was improper. From the context, it actually appears that she was directed to meet with the administrator because of a complaint she *herself* had made about alleged misconduct by another student named "Mary." Thereafter, in May, 1997, Petitioner began more aggressively to pursue her claim that she had been sexually assaulted. In March, 1998, she filed a written complaint against the police officer who originally met with her. In August, 1998, despite the staleness of her claims, she was allowed to meet with the College President and other College administrators.

However, unhappy with the Santa Monica College Respondents' handling of her allegations, Petitioner filed a small claims action in Los Angeles Municipal Court. A hearing was held on October 6, 1998, in which the state court judge properly dismissed Petitioner's claims for failure to comply with state law tort claim requirements. In the course of the hearing, Petitioner became disruptive and was subdued by Sheriff's officers stationed in the courtroom.

Plaintiff thereafter filed a Complaint in federal district court on March 15, 1999. She named as defendants the Santa Monica College Respondents and also various individuals and branches of Los Angeles County, hereafter "County Respondents." The Complaint was virtually incomprehensible, but giving it the most generous construction possible, it appeared to allege civil rights claims under 42 U.S.C Section 1983 and by extension claims under 42 U.S.C. Section 1985, Title IX of the Education Amendments of 1972, and Title VI of the Civil Rights Act of 1964. It also alleged

various pendent state tort claims. The Court granted Motions to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure by both the Santa Monica College Respondents and the County Respondents on October 8, 1999.

In his Order granting the Motion, Judge Spencer Letts explained the procedural history of this matter:

> Plaintiff filed her complaint on March 15, 1999. On the face of the complaint, plaintiff indicated her belief that the complaint would need to be amended. Pursuant to Federal Rule of Civil Procedure 15(a), plaintiff was entitled to file an amended complaint prior to the filing of any responsive pleading, or within twenty days of service. Plaintiff did not amend the complaint, and certain defendants filed responsive pleadings.
>
> On May 3, 1999, defendants moved to dismiss plaintiff's entire complaint. Rather than opposing the motion to dismiss, on May 12, 1999, at the Informal Status Conference, plaintiff instead indicated that she had prepared an Application for Leave to Amend the Complaint, which was filed that day, wherein she acknowledged that her complaint was defective and requested additional time to prepare and file an amended complaint. Defendants agreed to abandon their objections to plaintiff's filing an amended complaint at that juncture of the case, and to permit plaintiff to amend her complaint within a reasonable time. Defendants also agreed to withdraw their motion to dismiss. The court directed the parties to agree to a time certain by which plaintiff would file her amended complaint.

Rather than immediately proposing a deadline, as contemplated by the court, not until May 30, 1999, almost three weeks after the Informal Status Conference, did plaintiff request that she be allowed another three months, until September 1, 1999, to amend her complaint. Defendants proposed that plaintiff be allowed 30 days to amend her complaint. The parties were unable to agree, and plaintiff filed another motion for additional time to amend her complaint. Plaintiff's motion for additional time was denied by the court on June 19, 1999. On July 7, 1999, nearly four months after filing her complaint and nearly two months after her initial request to amend, plaintiff filed her first amended complaint.

On August 25, 1999 and September 3, 1999, the County Defendants and Santa Monica College Defendants, respectively, filed motions to dismiss plaintiff's first amended complaint. Rather than filing a timely opposition, on September 21, 1999, plaintiff instead filed an ex parte application for more time to prepare and file a second amended complaint, for leave to file additional exhibits to the first amended complaint, and for a continuance of the hearing on the motions to dismiss. Plaintiff's ex parte application was denied. On October 4, 1999, two weeks after it was due, plaintiff filed a document entitled "Plaintiff Angela Bernhardt's Early Opposition to Santa Monica College et al Defendants [sic] Motion to Dismiss Plaintiff's Complaint under FRCP 12(b), A More Thorough Version Shortly," in which she states that "a much fuller version [is] to follow shortly." Opposition at 4.

> At the time her initial complaint was filed, plaintiff knew it was deficient and would need to be amended. Plaintiff was given ample time, almost four months, to correct the defects in her initial complaint and submit her claims to the court in an amended complaint. (ER 53.)

The Court accordingly dismissed the Santa Monica College Defendants from the lawsuit. The Court further explained in its Order:

> By repeatedly requesting additional time to file amended complaints that were not yet drafted, and now by claiming that "a much fuller version" of her opposition is "to follow shortly," plaintiff has attempted to avoid having the court examine the merits of her claims. Plaintiff's requests have not been valid, and have forced defendants to incur needless additional expense in opposing plaintiff's requests.
>
> The basic facts underlying plaintiff's complaint have not changed. Plaintiff claims that in 1994, defendant Jones sexually harassed her, and that over the next few years, the remainder of the defendants failed to properly handle plaintiff's reporting of the harassment. Defendants have a right to respond to the allegations against them and, therefore, to have the court act on their motions to dismiss without further delay.

Several months later, on March 24, 2000, the District Court ordered petitioner to show cause why she should not be declared a vexatious litigant pursuant to Federal Rule of

Civil Procedure, Rule 11, and Local Rule 27A. Petitioner was afforded a full opportunity to respond on the Order to Show Cause, and she did so on April 14, 2000. The District Court on April 28, 2000 issued an Order Declaring Plaintiff a Vexatious Litigant.

Petitioner then appealed to the Ninth Circuit Court of Appeals from both the order granting the motions to dismiss and the order declaring her a vexatious litigant. Her appeals were consolidated by the Court of Appeals. She filed extensive, complex and verbose Opening and Reply Briefs, but as discussed below in the Argument, she never raised most of the issues she tries now to submit to this Court. The matter was fully briefed to the Court of Appeals by all parties. On June 25, 2001, the Ninth Circuit issued a Memorandum Opinion that was even more succinct than the District Court's orders:

> With respect to [the appeal from the order of dismissal] . . . We affirm on grounds that Bernhardt's state tort claims against the Santa Monica College Defendants are barred by the doctrine of res judicata, and because Bernhardt failed to prosecute her remaining claims.
>
> With respect to [the appeal from the order declaring her a vexatious litigant] we affirm the orders . . . including, but not limited to, the district court's vexatious litigant order entered on May 1, 2000.

Petitioner sought rehearing and rehearing en banc, both of which were denied by the Ninth Circuit by order filed October 5, 2001. This order bears the specific direction that "no further filings shall be accepted in this closed appeal."

This Petition was filed February 1, 2002. True to form, Petitioner sought several extensions of time from this Court before she succeeded in filing the Petition.

SUMMARY OF ARGUMENT

Petitioner's lawsuits against the Santa Monica Respondents and the County Respondents were properly disposed of by the District Court, and that order was properly affirmed by the Ninth Circuit Court of Appeals. Her federal civil rights claims against the Santa Monica Respondents were *not*, as she seems to think, dismissed by the District Court based on the small claims court judgment. They were correctly dismissed by the District Court based on the arguments contained in the Motion to Dismiss, which established that the District Court did not have jurisdiction over the Santa Monica Respondents for the federal claims. The pendent state claims *were* barred by res judicata. This decision was a correct application of California law.

Petitioner never presented her theories regarding the full faith and credit clause to the Court of Appeals, although they could have been heard there. She similarly failed to make her arguments regarding issue preclusion. She completely misrepresents the state of the record and the true rulings of all three of the Courts below (the District Court, the Court of Appeals and particular the Los Angeles County Small Claims Court, which she repeatedly describes as having issued a "default" judgment). She was properly found to be a vexatious litigant.

The Court should not hesitate in this case to deny the Petition.

REASONS FOR DENYING THE WRIT

I. PETITIONER HAS PRESENTED QUESTIONS TO THE COURT NOT ENCOMPASSED BY THE PROCEEDINGS BELOW.

Petitioner has articulated nineteen separate "questions presented." She has presented these issues in too poorly focused a way for this Court to consider. Morever, she has presented issues that were not considered by the District Court or the Court of Appeal. She cannot raise them for the first time to this Court.

Rule 14-4 of the Rules of the United States Supreme Court provides that the failure of a Petitioner to present with *accuracy, brevity and clarity* whatever is necessary to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition. [emphasis added] Nineteen "issues" defy the purposes of the writ of certiorari, which is traditionally a very narrow examination. The Petition can be properly denied on the grounds that Rule 14-4 has been violated. Petitioner cannot excuse herself; even Petitioners proceeding *in propria persona* are held to the requirements of the rules.

Most of Petitioner's nineteen questions concern matters not argued to the courts below. She cannot raise them for the first time by way of a petition for writ of certiorari to this Court.

II. THE COMPLAINT WAS PROPERLY DISMISSED UNDER RULE 12(b)(6).

Petitioner repeatedly states that her federal civil rights claims were dismissed by the District court because of the

res judicata effect given to the proceedings in the Los Angeles Small Claims Court. A review of the record shows that this was *not* the case. The federal claims were correctly dismissed for lack of jurisdiction. Thereafter, the *pendent state claims* were dismissed based on the res judicata effect of the Small Claims action.

A. *The District Court lacked jurisdiction over the Santa Monica Respondents on Petitioner's federal civil rights claims.*

1. *All of Appellant's Claims Were Barred by the Applicable Statute of Limitations.*

When a federal statute does not contain a specific statute of limitations period, it is settled practice to adopt the appropriate state statute of limitations. *Wilson v. Garcia*, 471 U.S. 261, 105 S. Ct. 1938, 85 L. Ed. 2d 254 (1985). This Court has ruled that the appropriate statute of limitations in 42 U.S.C. § 1983 civil rights cases is the state's personal injury statute. *Wilson v. Garcia*, 471 U.S. at 280, 105 S. Ct. at 1949; *See also Del Percio v. Thornsley*, 877 F.2d 785 (9th Cir. 1989). In California, the statute of limitations for personal injury claims is one year. California Code of Civil Procedure 340(3).

While state law determines the limitations period in a federal civil rights action, the determination when the limitations begins to run is governed solely by federal law. *Owens v. Okure*, 488 U.S. 235, 109 S. Ct. 573, 102 L. Ed. 2d 594 (1989). In federal civil rights actions, the statute of limitations begins to accrue at the time the plaintiff receives notice of the constitutional deprivation. *Delaware State College v. Ricks*, 449 U.S. 250, 101 S. Ct. 498, 66 L. Ed. 2d

431 (1980); *Chardon v. Fernandez*, 454 U.S. 6, 102 S. Ct. 28, 70 L. Ed. 2d 6 (1981).

The limitations periods on Petitioner's various claims began to accrue no later than the dates the Complaint states that Petitioner was aware they had occurred. At various points in the Complaint, Petitioner alleged events involving Santa Monica College Respondents in July, 1994; in November, 1996; and in April 1997. She did not bring this action until March 15, 1999. Her claims under 42 U.S.C. Sections 1983, and by extension her claims under 42 U.S.C. Section 1985, Title IX of the Education Amendments of 1972, and Title VI of the Civil Rights Act of 1964, were barred by the applicable limitations period.

2. *The Trial Court Had No Jurisdiction over the Santa Monica College Respondents, Because the Eleventh Amendment Bars Suits Against California's Educational Entities under 42 U.S.C. Section 1983.*

> The United States Constitution, Amendment XI states:
>
> "The judicial power . . . shall not . . . . extend to any suit in law or equity . . . . against one of the United States by Citizens of another State or by Citizens or Subjects of any Foreign State."

The Eleventh Amendment is interpreted as a grant of sovereign immunity to the states against suit in federal court "in the nature of a jurisdictional bar." *Alabama v. Pugh*, 438 U.S. 781, 782, 98 S. Ct. 3057, 3057-3058, n.1; 57 L. Ed. 2d 1114 (1978); *Seminole Tribe of Florida v.*

Florida, 517 U.S. 44, 116 S. Ct. 1114, 1122, 134 L. Ed. 2d 252 (1996); *Kimel v. Florida Board of Regents* 120 S. Ct. 631, 528 U.S. 62 (2000).

a. *A California Community College District Is Immune from Liability under 42 U.S.C. Section 1983.*

Under the Eleventh Amendment, agencies of the state are immune from private damage actions or suits for injunctive relief brought in federal court. Immunity attaches regardless of the nature of the relief sought. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100, 104 S. Ct. 900, 907, 79 L. Ed. 2d 67 (1984); *Alabama v. Pugh*, 438 U.S. 781, 98 S. Ct. 3057, 57 L. Ed. 2d 1114 (1978). To determine whether a governmental entity is an arm of the state, federal courts look to the way state law treats the entity. *Mt. Healthy City School Dist. Board of Ed. v. Doyle*, 429 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977); *Rutledge v. Arizona Board of Regents*, 660 F. 2d 1345, 1349 (9th Cir. 1981), *aff'd. sub nom. Kush v. Rutledge*, 460 U.S. 719, 103 S. Ct. 1483, 75 L. Ed. 2d 413 (1983).

California law has long and consistently treated public school and community college districts as state agencies for the local delivery of education. *Hall v. City of Taft*, 47 Cal. 2d 177, 302 P. 2d 574 (1956). Examining *Hall* and its progeny, the Ninth Circuit has had occasion, in evaluating cases brought under 42 U.S.C. Section 1983, to examine every type of educational entity existing at the local level in California to determine whether Eleventh Amendment immunity applies. In every case, it has found that immunity applies. *Mitchell v. Los Angeles Community College District*, 861 F. 2d 198 (9th Cir. 1988); *Belanger v. Madera Unified*

School District, 963 F. 2d 248 (9th Cir. 1992), *cert denied*, 113 S. Ct. 1280 (1993); *Eaglesmith v. Ward et al* , 73 F.3d 857, 860 (9th Cir. 1995); *Kirchmann v. Lake Elsinore School District*, 2000 WL 1507321 (Cal. App. 2000).[1]

The status of a community college district under California law is well established; no further factual showing was necessary. Under *Mitchell* and *Belanger*, dismissal was well-founded.

b. *Any Claims for Injunctive Relief Were Also Barred.*

Petitioner only sought money damages in this action. However, even if she had been granted leave to amend to include injunctive relief, the Eleventh Amendment would still bar the claims. Immunity attaches in cases where the only relief sought is injunctive. *Papasan v. Allain*, 478 U.S. 265, 277-78, 106 S. Ct. 2932, 2940, 92 L. Ed. 2d 209 (1986). See also, *Brooks v. Sulphur Springs Valley Elec. Co-op*, 951 F. 2d 1050, 1053, n.1 (9th Cir. 1991).

3. *The Immunity Extends to the Individual Named Respondents.*

An officer of a state agency, sued in his or her official capacity, is immune under the Eleventh Amendment from claims for monetary damages. *Hafer v. Melo*, 502 U.S. 21, 27, 112 S. Ct. 358, 116 L. Ed. 2d 301 (1991); *Jackson v. Hayakawa*, 682 F. 2d 1344, 1350 (9th Cir. 1982). State officials are immune from actions for monetary damages because such

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1. For these reasons, Petitioner's citation in her Question No. 11 to *Monell v. Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611, is especially inapposite.

actions are actions against the governmental entity of which the officer is an agent. State officials are also immune from actions for injunctive relief where, as discussed above, the relief sought is primarily retrospective in nature. See, *Belanger v. Madera Unified School District*, *supra.*, 963 F. 2d at 250, n.1.

The Complaint sought general damages against all the entities and individuals named by Petitioner as defendants, and "each of them." Clearly it does not distinguish between individual Santa Monica College Respondents in this respect. Dismissal was properly granted as to *all* the claims for relief based on 42 U.S.C. Section 1983.

4. *The Individual Santa Monica College Respondents Named in Their Individual Capacities Were Entitled to Assert Qualified Immunity from Liability.*

Insofar as the many individual Santa Monica College Respondents named by Petitioner were named as individuals, rather than their official capacities, they were entitled to assert qualified immunity as an affirmative defense. *Wood v. Strickland*, 420 U.S. 308, 318, 95 S. Ct. 992, 43 L. Ed. 2d 214 (1975); *Brandon v. Holt*, 469 U.S. 464, 471-473, 105 S. Ct. 873, 878, 83 L. Ed. 2d 878 (1985). The defense of qualified immunity protects "governmental officials . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald* 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L. Ed. 2d 396 (1982).

a. *Individual Santa Monica College Respondents Were Entitled to Be Dismissed from this Matter Even at this Early Stage of the Proceedings.*

The issue of qualified immunity is a threshold issue which is to be determined by a court at the earliest possible stage of litigation. *Mitchell v. Forsyth*, 472 U.S. 511, 105 S. Ct. 2806 (1985); *Anderson v. Creighton*, 483 U.S. 635, 107 S. Ct. 3034 (1987). As noted by the Ninth Circuit in *Thorsted v. Kelly*, 858 F. 2d 571 (9th Cir. 1988), since qualified immunity is an immunity from suit rather than a mere defense, "it is essential that 'insubstantial claims' be resolved as quickly as possible." 858 F. 2d at 575.

In *Branch v. Tunnell*, 937 F. 2d 1382 (9th Cir. 1991), the Ninth Circuit adopted a heightened pleading standard for cases in which the alleged "clearly established law" at issue contains a subjective element, such as motive or intent. See also, *Branch v. Tunnell*, 14 F. 3d 449 (9th Cir. 1994).

All of Petitioner's Claims for Relief were extremely conclusory and did not provide any degree of specificity. Indeed, the Claims for Relief alleged no more than the making of ordinary decisions regarding the management of a community college and providing assistance to an uncooperative student pressing a stale claim of sexual harassment. The Claims for Relief did not even allege with any specificity which of the individually named Santa Monica College Respondents was supposed to have done what to Petitioner. Under the doctrine of *Branch v. Tunnell*, these unsupported conclusory allegations were insufficient. The District Court properly dismissed them, and the Ninth Circuit properly affirmed.

b. *Qualified immunity protected the Santa Monica Individual Respondents from this action.*

The qualified immunity test is a two-part inquiry. First, was the law governing the official's conduct clearly established, and second, under that law, could a reasonable official have believed his or her conduct was lawful. "The threshold determination of whether the law governing the conduct at issue is clearly established is a question of law for the court." *Act Up!/Portland v. Bagley*, 988 F.2d 868, 872 (9th Cir. 1993).

The Claims for Relief contained in the Complaint failed on their face to state *any* violation of constitutional rights. Accordingly, they certainly did not meet the standard for a claim of "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald, supra.* In determining whether any constitutional right is implicated, the Court must look at the particular, relevant context rather than at the abstract and general. *Anderson v. Creighton, supra*, 483 U.S. at 639-641, 107 S. Ct. at 3039-3040. The reason for this level of specificity is to enable "a reasonable official [to] understand that what he is doing" is unlawful. *Id.*

In California, public governing boards and officers are immune from liability for discretionary decisions. California Government Code § 820.2. *See, e.g., Caldwell v. Montoya*, 10 Cal.4th 972, 42 Cal.Rptr.2d 842 (1995). Even if state law immunities did not apply, *in individual capacity actions* Appellees "may assert personal immunity defenses such as objectively reasonable reliance on existing law." *Hafer v. Melo*, 502 U.S. 21, 112 S. Ct. 358, 362, 116 L. Ed. 2d 301, 309 (1991); *Kentucky v. Graham*, 473 U.S. 159, 166, 105 S. Ct. 3099, 3105, 87 L. Ed. 2d 114 (1985).

Both federal and state law show that the individual Santa Monica College Respondents were not violating any well established right of Petitioner's. To the contrary, they were merely performing their job duties, and the law provides them individual immunity for doing so. The individual Appellees were entitled to assert qualified immunity from suit, and the trial court correctly dismissed the causes of action against them at this stage of the pleadings.

5. *The Complaint Fails to State Any Claims for a Violation of Constitutional Rights.*

Petitioner tried to weave various federal constitutional and statutory claims throughout her Complaint, but on its face her effort failed and the District Court properly rejected her claims.

She attempted to assert a violation of 42 U.S.C. Section 1983 by alleging a "restrained sexual assault" by her instructor. She also apparently characterized this as a violation of Title IX of the Education Amendments of 1972 and/or of 42 U.S.C. Section 2000e et seq. (Title VI). But she never alleged that she was subjected to the alleged "restrained sexual assault" *because of* her sex, as required by these statutes. *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 118 S. Ct. 998, 140 L. Ed.201(1998). Her claims under 42 U.S.C. Section 1983 and 1985, and under Title IX and Title VI, were properly dismissed. Petitioner similarly failed to articulate any actions by Santa Monica College Respondents which could be construed as violations of constitutional rights. Her claims under 42 U.S.C. Section 1983, and concomitantly her claims under 42 U.S.C. Sections 1985 and 1986, were properly dismissed.

B. *The State Law Tort Claims Against the Santa Monica College Appellees Were All Barred by the Doctrine of Res Judicata, by the Failure to Present a Timely Claim, and by Their Vagueness and Ambiguity.*

The Complaint, as it relates to the Santa Monica College Respondent, also contained a confused series of common law state tort claims. The trial court properly declined to assert any jurisdiction over them whatsoever.

1. *The state tort claims were barred by res judicata.*

Pursuant to the Complaint itself, it appears that Petitioner's court action in the small claims court of the Los Angeles Municipal Court involved all the same state court causes of action that she included as pendent state claims in her Complaint filed with the District Court. The District Court and Court of Appeals properly concluded she could not relitigate in federal court claims already dismissed by a state court. The state court case was *dismissed*, not defaulted. That determination was res judicata as to those state court claims. (See discussion below regarding effect of such claims under California. law.)

2. *The state tort claims were barred by the failure to present timely claims.*

Petitioner's tort claims (battery, defamation, intentional infliction of emotional distress, intentional misrepresentation, negligence, false arrest, "unlawful detainment," "unlawful search," assault and battery) were all barred by her failure to present timely claims to the Santa Monica Community

College District. This fact was recognized by the Los Angeles Court which heard Petitioner's first lawsuit, resulting in the dismissal of her claims in small claims court. Although Petitioner alleged that she tendered the requisite claims, she did not and cannot allege timely compliance with the law.

III. THE LOWER FEDERAL COURTS DID NOT FAIL TO GIVE PROPER FULL FAITH AND CREDIT TO THE DECISION OF THE SMALL CLAIMS COURT.

As discussed above, neither the District Court nor the Court of Appeals held that Petitioner's federal civil rights claims were barred by the doctrine of res judicata based on the decision of the Small Claims Court. They were barred by her failure to state a viable claim in her Complaint, and her failure to amend the Complaint when given the opportunity. The District Court and the Court of Appeals did conclude that her pendent state claims were barred by the doctrine of res judicata based on the decision of the Small Claims Court. In this respect, the lower federal courts correctly applied California law.

A. *California Small Claims Court Judgments are Res Judicata in the Federal Courts.*

The Small Claims Courts of California are provided for at California Code of Civil Procedure Section 116.110 et seq. The jurisdiction of the Small Claims Court, set out at Code of Civil Procedure section 116.220, extends to matters if the amount of the demand does not exceed five thousand dollars. It is a simplified form of litigation in which no attorneys appear. Code of Civil Procedure Section 116.530. The judgment is final as to the plaintiff, but a defendant may appeal. Code of Civil Procedure Section 116.710. A plaintiff

that fails to appear may move to vacate the judgment. Code of Civil procedure Section 116.720.

The California Supreme Court has long held that judgments of a Small Claims Court will be res judicata as to the issues actually before it. In *Sanderson v. Niemann*, 17 Cal. 2d 563, 110 P. 2d. 1025 (1941) the California Supreme Court concluded that a judgment of a Small Claims Court is res judicata to a second suit on the same cause of action. The California high court said in *Sanderson:*

> As is pointed out in the leading case of *Todhunter v. Smith*, 219 Cal. 690 [1934] the doctrine of *res judicata* has a dual aspect. The authorities indicate that although a judgment of any court whether of high or low jurisdiction, and of record or not, constitutes a complete bar against a second suit on the *same* cause of action, in a second suit upon a *different* cause of action it constitutes but an estoppel or conclusive determination of such issues only as were actually raised and litigated.

The Ninth Circuit Court of Appeals, in considering the effect in federal court of a California small claims court judgment, has interpreted its jurisdiction in accordance with the statements in *Sanderson.* In *Hawkins v. Bewley Allen Cadillac*, 959 F. 2d 240 (9th Cir. 1992), the Court of Appeal concluded:

> A federal court must give the same preclusive effect to a state court judgment as would the courts of the state where the judgment was rendered. *Allen v. McCurry*, 449 U.S. 90, 105 (1980). In California, a small claims court judgment is

> final and res judicata and precludes future actions on the same claim or cause of action. *Sanderson v. Niemann*, 17 Cal. 2d 563, 573, 110 P. 2d 1025, 1030 (1941). A valid final judgment on the merits in favor of a defendant serves as a complete bar to further litigation on the same cause of action. *Slater v. Blackwood*, 15 Cal. 3d 791, 795, 126 Cal. Rptr. 225, 226, 543 P. 2d 593, 594 (1975) (en banc). The California courts employ the primary rights theory to determine whether the same cause of action is at issue. *Eichman v. Fotomat Corp.*, 147 Cal. App. 3d 1170, 1174, 197 Cal. Rptr. 612, 614 (1983). "[I]f two actions involve the same injury to the plaintiff and the same wrong by the defendant then the same primary right is at stake even if in the second suit the plaintiff pleads different theories of recover, seeks different forms of relief and/or adds new facts supporting recover." *Id.* Thus, the invasion of one primary right gives right to one cause of action. *Slater*, 15 Cal. 3d at 795.

B. *Petitioner's Pendent State Claims Were Barred by Res Judicata.*

Clearly here, the lower federal courts gave the correct preclusive effect to the Small Claims Court judgment. Petitioner was the plaintiff in that action, and she chose the forum. She did not prevail. Her state tort claims were found by that court to be barred by her failure to present a required claim under California Government Code Section 800 et seq. She attempted to assert them again as pendent claims in her Complaint to the District Court. The federal courts properly gave res judicata effect to the Small Claims Court determination, and dismissed her pendent state claims.

Petitioner's arguments regarding whether the Small Claims Court had jurisdiction over the Respondents are bewildering at best. It is not clear whether she is referring to jurisdiction over the Santa Monica College Respondents or the County Respondents. The record reflects that the Santa Monica Respondents appeared in the small claims court proceeding, and the court was certainly competent to render judgment in their favor.

Petitioner's repeated references to a "default" judgment in the small claims proceeding is likewise obscure. Petitioner was the plaintiff in that proceeding. She lost her case. She thereupon became disruptive and had to be forcibly subdued by Sheriff's officers stationed in the courtroom. There was no "default" in the case. Plaintiff lost, and had no right to appeal.

The lower federal court determinations regarding the effect of the Small Claims Court judgment on the pendent state claims were correct.

IV. PETITIONER WAS PROPERLY DECLARED A VEXATIOUS LITIGANT.

The District court issued its order to show cause regarding declaring Petitioner a vexatious litigant *sua sponte.* The order was not requested by any defendant in the case. But, the record amply supports the correctness of the District court's ruling, and the Ninth Circuit was correct to affirm it.

Petitioner was not entitled to any particular leniency from the federal courts because she is a pro per litigant. Such litigants are entitled to certain patience from the courts because of their lack of experience and sophistication. But they are not entitled to abuse the courts' process any more than litigants represented by counsel may do so.

Petitioner's behavior in this case was set out very clearly in the District Court's Order Granting Defendants' Motion to Dismiss filed October 8, 1999. She persisted in her inappropriate efforts to invoke the court's process. The standard set out by the Ninth Circuit in *De Long v. Hennessey*, 912 F. 2d 1144, 1146-68 (9th Cir. 1990) was met. The Ninth Circuit correctly affirmed the District Court's order.

CONCLUSION

Santa Monica College Respondents urge the Court to deny this Petition. It presents no question appropriate for review by this Court.

Respectfully submitted,

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